

IN THE COURT OF APPEALS OF THE STATE OF IDAHO

Docket No. 36160

STATE OF IDAHO,)	2009 Unpublished Opinion No. 629
)	
Plaintiff-Respondent,)	Filed: October 6, 2009
)	
v.)	Stephen W. Kenyon, Clerk
)	
LARENE CLAUDIA GREEN,)	THIS IS AN UNPUBLISHED
)	OPINION AND SHALL NOT
Defendant-Appellant.)	BE CITED AS AUTHORITY
)	

Appeal from the District Court of the Sixth Judicial District, State of Idaho, Bannock County. Hon. David C. Nye, District Judge.

Order relinquishing jurisdiction and ordering previously imposed sentence into execution, affirmed; order denying I.C.R. 35 motion for reduction of sentence, affirmed.

Molly J. Huskey, State Appellate Public Defender; Sara B. Thomas, Chief Appellate Unit, Appellate Public Defender, Boise, for appellant.

Hon. Lawrence G. Wasden, Attorney General; Elizabeth A. Koeckeritz, Deputy Attorney General, Boise, for respondent.

Before LANSING, Chief Judge; GUTIERREZ, Judge;
and GRATTON, Judge

PER CURIAM

While on felony probation, Larene Claudia Green pled guilty to unlawful possession of a firearm. Idaho Code § 18-3316. The district court imposed a unified five-year sentence with two years determinate and retained jurisdiction. Prior to the conclusion of the retained jurisdiction period, the court relinquished jurisdiction and ordered execution of Green's sentence. Green filed an Idaho Criminal Rule 35 motion, which the district court denied. Green appeals the court's decision to relinquish jurisdiction and the denial of her Rule 35 motion.

The decision as to whether to place a defendant on probation or, instead, to relinquish jurisdiction is committed to the discretion of the sentencing court. *State v. Hernandez*, 122 Idaho

227, 230, 832 P.2d 1162, 1165 (Ct. App. 1992); *State v. Lee*, 117 Idaho 203, 786 P.2d 594 (Ct. App. 1990); *State v. Toohill*, 103 Idaho 565, 567, 650 P.2d 707, 709 (Ct. App. 1982). Therefore, a decision to relinquish jurisdiction will not be disturbed on appeal except for an abuse of discretion. *State v. Chapman*, 120 Idaho 466, 816 P.2d 1023 (Ct. App. 1991). The record in this case shows that the district court properly considered the information before it and determined that probation was not appropriate. We hold that the district court did not abuse its discretion.

A motion for reduction of sentence under I.C.R. 35 is essentially a plea for leniency, addressed to the sound discretion of the court. *State v. Knighton*, 143 Idaho 318, 319, 144 P.3d 23, 24 (2006); *State v. Allbee*, 115 Idaho 845, 846, 771 P.2d 66, 67 (Ct. App. 1989). In presenting a Rule 35 motion, the defendant must show that the sentence is excessive in light of new or additional information subsequently provided to the district court in support of the motion. *State v. Huffman*, 144 Idaho 201, 203, 159 P.3d 838, 840 (2007). Upon review of the record, including the new information submitted with Green's Rule 35 motion, we conclude no abuse of discretion has been shown.

The district court's order relinquishing jurisdiction and ordering previously imposed sentence into execution and the district court's order denying Green's Rule 35 motion are affirmed.